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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVIT GHAHRAMANYAN, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 21-1415 Agency No. A095-652-545 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted July 20, 2023
Pasadena, California

Before: NGUYEN and FORREST, Circuit Judges, and BENNETT,** Senior District Judge.***

Petitioner Davit Ghahramanyan, a native and citizen of Armenia, entered the United States in 2003 and was granted asylum in 2011. After Petitioner accumulated several criminal convictions, the Government reopened his immigration proceedings

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Richard D. Bennett, United States Senior District Judge for the District of Maryland, sitting by designation.

and filed a motion to terminate his asylum status. Petitioner now seeks review of a decision of the Board of Immigration Appeals ("BIA") upholding the findings of an Immigration Judge ("IJ"), who terminated his asylum status and denied his application for withholding and deferral of removal. We have jurisdiction under 8 U.S.C. § 1252(b), and we deny the petition for review.

I. Termination of Asylum

Petitioner first argues that his conviction under Cal. Health & Safety Code § 11351 does not constitute an aggravated felony and as such is not a valid predicate to terminate his asylum status. *See Diego v. Sessions*, 857 F.3d 1005, 1008 (9th Cir. 2017); 8 U.S.C. §§ 1158(b)(2)(A)(ii), (b)(2)(B)(i). Whether a crime constitutes an aggravated felony is a legal question that we review *de novo*. *See United States v. Alvarez*, 60 F.4th 554, 557 (9th Cir. 2023).

We apply the modified categorical approach to determine whether a state conviction under Cal. Health & Safety Code § 11351 constitutes an aggravated felony drug trafficking crime. *Lopez v. Sessions*, 901 F.3d 1071, 1075 (9th Cir. 2018). Under this framework, the court must examine "the terms of the charging document, the terms of the plea agreement . . . or to some comparable judicial record" to assess whether the defendant was convicted of trafficking a substance controlled under federal law. *Id.* According to Petitioner's criminal record, he was convicted of Count 2 of the criminal complaint. That count charged him with

"unlawfully possess[ing] for sale and purchase for sale a controlled substance, to wit, cocaine," in violation of § 11351. Accordingly, Petitioner's conviction constitutes an aggravated felony, and his asylum status was properly terminated.

II. Particularly Serious Crime

Petitioner next argues that the BIA abused its discretion by affirming the IJ's finding that his § 11351 conviction constitutes a particularly serious crime barring withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(ii). The BIA has substantial discretion to determine whether a given offense is particularly serious, and we lack jurisdiction to "reweigh the evidence and reach our own determination about the crime's seriousness." *Hernandez v. Garland*, 52 F.4th 757, 765 (9th Cir. 2022) (quoting *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1077 (9th Cir. 2015)). However, we review the BIA's analysis for abuse of discretion and may reverse if the BIA's decision was arbitrary, irrational, or contrary to law, or if the agency relied on inappropriate factors or improper evidence to reach its conclusion. *Park v. Garland*, 72 F.4th 965, 2023 WL 4243695, at *7 (9th Cir. 2023).

As Petitioner committed a drug trafficking crime, he faces an "extraordinarily strong presumption" that his offense constitutes a particularly serious crime. *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 947 (9th Cir. 2007). To rebut this presumption, Petitioner must establish, at minimum, the six factors set forth in *Matter of Y-L-*, 23 I. & N. Dec. 270, 276–77 (BIA 2002), including, as relevant, "merely peripheral

involvement" in the offense. *Miguel-Miguel*, 500 F.3d at 946–47. The IJ found, and the BIA affirmed, that Petitioner failed to establish this factor and could not rebut the *Matter of Y-L-* presumption. While Petitioner contests the substance of that finding, we lack jurisdiction to reweigh the evidence and reach a contrary conclusion. *Hernandez*, 52 F.4th at 765. And while Petitioner argues that the mental impairment caused by his addiction was not considered, he offered no testimony "directly attributing" the instant offense to his addiction. *See Benedicto v. Garland*, 12 F.4th 1049, 1062 (9th Cir. 2021). Accordingly, as the BIA applied the correct factors and did not rely on improper evidence, the agency did not abuse its discretion by concluding that Petitioner's § 11351 conviction constitutes a particularly serious crime.

III. Convention Against Torture

Third, Petitioner challenges the BIA's denial of deferral of removal under the Convention Against Torture ("CAT"). The CAT provides mandatory relief for any immigrant who can show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." *Hamoui v. Ashcroft*, 389 F.3d 821, 826 (9th Cir. 2004) (citations omitted). The immigrant must demonstrate that he faces a particularized risk—that "he, *in particular*," would more likely than not be tortured upon return. *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 706 (9th Cir. 2022). The denial of CAT relief is reviewed for substantial evidence. *Dawson*

v. Garland, 998 F.3d 876, 882 (9th Cir. 2021). Here, while Petitioner offers evidence indicating that torture occurs generally in Armenia, he relies primarily on inferences to argue that he would personally be targeted for torture. Accordingly, substantial evidence supports the BIA's denial of CAT relief.

IV. Due Process

Petitioner also argues that he was denied due process during his merits hearing before the IJ. A due process violation in removal proceedings occurs where "(1) the proceeding was so fundamentally unfair that the [immigrant] was prevented from reasonably presenting his case, and (2) the [immigrant] demonstrates prejudice, which means that the outcome of the proceeding may have been affected by the alleged violation." *Vilchez v. Holder*, 682 F.3d 1195, 1199 (9th Cir. 2012) (quoting *Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009)). Here, Petitioner raises two due process claims but fails to establish prejudice under either theory.

First, Petitioner argues that he was not afforded an opportunity to contest the termination of his asylum status during his hearing before the IJ. However, as the record clearly demonstrates that Petitioner was convicted of trafficking cocaine—an aggravated felony under the modified categorical approach—that is a sufficient basis to terminate Petitioner's asylum status, regardless of any other testimony that he may have adduced. *See Pagayon v. Holder*, 675 F.3d 1182, 1192 (9th Cir. 2011) (holding

that Petitioner failed to establish prejudice where there was "no connection between the additional evidence and the outcome of the proceeding").

Second, Petitioner claims that the IJ failed to inform him of the dispositive *Matter of Y-L-* factors and failed to adequately develop the record on this issue. We have previously held that an IJ must "explain to an [immigrant] what he must prove to establish the basis for the relief he seeks," and must "fully develop the record" by "scrupulously and conscientiously prob[ing] into . . . all the relevant facts." *Zamorano v. Garland*, 2 F.4th 1213, 1225–26 (9th Cir. 2021) (citations omitted). Here, Petitioner was not "prevented from reasonably presenting his case" where the IJ asked direct questions about Petitioner's § 11351 offense and gave Petitioner an open-ended opportunity to provide any additional information he thought necessary that was not drawn out by the IJ's questions. *See Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). But even assuming the IJ failed to apprise the Petitioner of the *Matter of Y-L-* factors or to adequately develop the record on this issue, Petitioner was not prejudiced by these deficiencies. The BIA cited the IJ's findings with approval, with minimal independent analysis. We may therefore presume that the BIA "gave significant weight to the IJ's findings" and "look to the IJ's . . . decision as a guide to what lay behind the BIA's conclusion." *Park*, 2023 WL 4243695, at *6 (alteration in original) (citation omitted). It is clear from the IJ's decision that the IJ found that Petitioner had not testified credibly regarding his § 11351 offense. *See*

Parra v. Sessions, 704 Fed. Appx. 713, 714 (9th Cir. 2017) (quoting *Matter of Y-L-* and noting that post-conviction claims of innocence are insufficient to rebut the presumption that drug trafficking offenses are particularly serious). Accordingly, Petitioner was not prejudiced by any deficiencies in the IJ's questioning.

PETITION DENIED.